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9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Statement of Issues Against:

Case No. 3213

13 DAILENE JENAE GERMANN
4211 E. Overlook Drive
14 San Diego, CA 92115

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Virginia K. Herold (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Pharmacy.

21 2. On or about May 3, 2007, the Board of Pharmacy received an application
22 for registration as a pharmacy technician from Dailene Germann (Respondent). On or about May
23 1, 2007, Dailene Germann certified under penalty of perjury to the truthfulness of all statements,
24 answers, and representations in the application. The Board denied the application on May 5,
25 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code states in pertinent part:

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

5. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

1 (c) A board may deny a license regulated by this code on the
2 ground that the applicant knowingly made a false statement of fact required to be
3 revealed in the application for such license.

4 **FIRST CAUSE FOR DENIAL OF APPLICATION**

5 **(June 20, 2003 Criminal Conviction -
6 Driving While Under the Influence of Alcohol on April 23, 2003)**

7 6. Respondent's application is subject to denial pursuant to Code section
8 480, subdivision (a)(1) for a criminal conviction that is substantially related to the qualifications,
9 functions, and duties of a pharmacy technician. On or about June 20, 2003, in the Superior Court
10 of California, San Diego County, in the matter entitled *People of the State of California v.*
11 *Dailene Jenae Germann*, Case No. M895385), Respondent was convicted by the court on her
12 plea of guilty of violating Vehicle Code section 23152, subdivision (a) (driving while under the
13 influence of alcohol), a misdemeanor. The circumstances of the conviction are as follows:

14 7. On or about April 23, 2003, Respondent was arrested for violating Vehicle
15 Code section 23152, subdivision (a) (driving while under the influence of alcohol), a
16 misdemeanor and Vehicle Code section 23152, subdivision (b) (driving a vehicle while having
17 .08% or more of alcohol in her blood), a misdemeanor.

18 8. Pursuant to the Plea Agreement, on or about June 20, 2003, Respondent
19 was sentenced to 180 days of custody, three days public work service, and five years formal
20 probation and various other terms.

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

22 **(July 27, 2007 Criminal Conviction -
23 Driving While Under the Influence of Alcohol on March 18, 2007)**

24 9. Respondent's application is subject to denial pursuant to Code section
25 480, subdivision (a)(1) for a criminal conviction that is substantially related to the qualifications,
26 functions, and duties of a pharmacy technician. On or about July 27, 2007, in the Superior Court
27 of California, San Diego County, in the matter entitled *People of the State of California v.*
28 *Dailene Jenae Germann*, Case No. C270076), Respondent was convicted by the court on her plea

1 of guilty of violating Vehicle Code section 23152, subdivision (b) (driving while under the
2 influence of alcohol with .08% or higher blood alcohol level) with a prior DUI pursuant to
3 Vehicle Code section 23540, a misdemeanor. The circumstances of the conviction are as
4 follows:

5 10. On or about March 18, 2007, Respondent was arrested for violating
6 Vehicle Code section 23152, subdivision (a) (driving while under the influence of alcohol), a
7 misdemeanor and Vehicle Code section 23152, subdivision (b) (driving a vehicle while having
8 .08% or more of alcohol in her blood), a misdemeanor.

9 11. Pursuant to the Plea Agreement, on or about July 27, 2007, Respondent
10 was sentenced to 96 hours of custody, five days public work service, and five years formal
11 probation and various other terms.

12 **THIRD CAUSE FOR DENIAL OF APPLICATION**

13 **(Dishonest Act)**

14 12. Respondent's application is subject to denial pursuant to Code section
15 480, subdivision (a)(2), in that Respondent committed a dishonest act with the intent to
16 substantially benefit herself. Respondent submitted an Application to the Board for Registration
17 as a Pharmacy Technician, executed by Respondent on May 1, 2007 and certified under penalty
18 of perjury to the truth and accuracy of all statements. Question No. 6 of the application asked if
19 Respondent had ever been convicted of or plead no contest to a violation of any law. Question
20 No. 6 stated "You must include all misdemeanor and felony convictions, regardless of the age of
21 the conviction, including those which have been set aside under Penal Code section 1203.4."
22 Respondent answered "No" to Question No. 6 when in fact, she had been convicted of DUI on
23 June 20, 2003.

24 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

25 **(Acts Which if Done by a Licentiate Constitute Cause for Discipline)**

26 13. Respondent's application is subject to denial pursuant to Code 480,
27 subdivision (a)(3), in that Respondent committed acts, which, if done by a licentiate constitute
28 cause for discipline, pursuant to Code sections 4300, as more particularly set forth above.

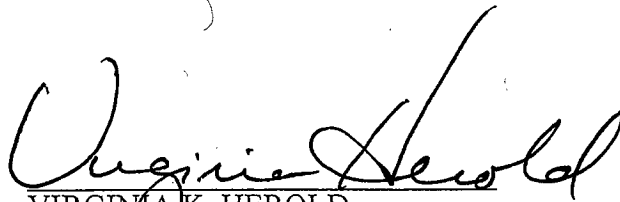
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

A. Denying the application of Dailene Jenae Germann for Registration as a Pharmacy Technician;

B. Taking such other and further action as deemed necessary and proper.

DATED: 10/14/08



VIRGINIA K. HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

SD2008802353

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